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Penthouse Global Media, Inc. and General
Media Communications, Inc.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

12 PENTHOUSE GLOBAL MEDIA,
13 INC., a Delaware corporation,
14 GENERAL MEDIA
COMMUNICATIONS, INC., a New
York corporation.

Plaintiffs,

V

GUCCIONE COLLECTION, LLC, a
Delaware limited liability company,
JEREMY FROMMER, an individual,
RICK SCHWARTZ, an individual,
JERRICK MEDIA HOLDINGS, INC.,
a Nevada corporation, JERRICK
VENTURES, INC., a Nevada
corporation, JERRICK VENTURES
LLC, and DOES 1-10, inclusive.

Defendants.

Case No. 2:17-CV-04980-PA (FFMx)

**SECOND AMENDED COMPLAINT
FOR: (1) COPYRIGHT
INFRINGEMENT; (2) TRADEMARK
INFRINGEMENT (3) FALSE
DESIGNATION OF ORIGIN; (4)
TRADEMARK DILUTION; (5)
COMMON LAW TRADEMARK
INFRINGEMENT; (6) COMMON
LAW UNFAIR COMPETITION; (7)
UNFAIR COMPETITION; (8)
TRADEMARK DILUTION; (9)
DECLARATORY RELIEF; (10)
FALSE ADVERTISING; AND (11)**

DEMAND FOR JURY TRIAL

25 Plaintiffs PENTHOUSE GLOBAL MEDIA, INC. and GENERAL MEDIA
26 COMMUNICATIONS, INC. (collectively, "Penthouse") hereby complain against
27 defendants GUCCIONE COLLECTION, LLC, JEREMY FROMMER, RICK
28 SCHWARTZ, JERRICK MEDIA HOLDINGS, INC., JERRICK VENTURES.

1 INC., JERRICK VENTURES LLC, and DOES 1-10 (collectively, "Defendants")
2 and alleges as follows:

3 **PARTIES**

4 1. Plaintiff Penthouse Global Media, Inc. ("Penthouse Global Media") is a
5 Delaware corporation with its principal place of business in Chatsworth, California.

6 2. Plaintiff General Media Communications, Inc. ("General Media") is a
7 New York corporation with its principal place of business in Chatsworth, California.

8 3. Penthouse is informed and believes that Guccione Collection, LLC, is a
9 limited liability company organized under the laws of the State of Delaware, with its
10 principal place of business located in New Jersey.

11 4. Penthouse is informed and believes that Defendant Jeremy Frommer is
12 a citizen of the United States currently residing in New Jersey, and is the Chief
13 Executive Officer of Jerrick Ventures, Inc. and Jerrick Media Holdings, Inc.; a
14 member of Jerrick Ventures, LLC; and a principal of Guccione Collection, LLC.

15 5. Penthouse is informed and believes that Rick Schwartz is a citizen of
16 the United States currently residing in New York, and is the President of Jerrick
17 Media Holdings, Inc., and a member of Jerrick Ventures, LLC.

18 6. Penthouse is informed and believes that Defendant Jerrick Media
19 Holdings, Inc. is a technology and digital media company distributes media content
20 through its portfolio of brands, incorporated under the laws of the state of Nevada,
21 with its principal place of business in Englewood, New Jersey.

22 7. Penthouse is informed and believes that Defendant Jerrick Ventures,
23 Inc. is a digital media holding company founded in 2013, incorporated in Nevada,
24 with its principal place of business in New Jersey.

25 8. Penthouse is informed and believes that Defendant Jerrick Ventures,
26 LLC, is a subsidiary of Defendant Jerrick Media Holdings, Inc., with its principal
27 place of business in New Jersey.

28 / / /

1 9. Penthouse is informed and believes that Defendants Does 1 through 10,
2 inclusive, are improperly using Plaintiffs' property. The true names, whether
3 corporate, individual, or otherwise of Does 1 through 10, inclusive, are presently
4 unknown to Penthouse and, therefore, these Does are being sued by fictitious names,
5 and Penthouse will seek leave to amend this Complaint to include the true names
6 and capacities when the same have been ascertained.

7 10. Penthouse is informed and believes that at all times relevant to this
8 action, each of the Defendants was the agent, affiliate, officer, director, manager,
9 member, principal, alter-ego, and/or employee of the other Defendant and was at all
10 times acting within the scope of such agency, affiliation, alter-ego relationship
11 and/or employment, and actively participated in or subsequently ratified and
12 adopted, or both, each and all of the acts or conduct alleged herein with full
13 knowledge of each and every violation of Penthouse's rights and the damages to
14 Penthouse proximately caused thereby.

JURISDICTION AND VENUE

16 11. This Court has subject matter jurisdiction over the claims alleged by
17 Penthouse because their claims arise under the Copyright Act, 17 U.S.C. §§ 101, *et*
18 *seq.*, and the Lanham Act, 15 U.S.C. §§ 1051, *et seq.*, and jurisdiction is conferred
19 by 28 U.S.C. § 1331 and 1338 (a) and (b).

20 12. This Court has specific personal jurisdiction over the Defendants
21 because in intentionally and willfully advertising, selling and renting the motion
22 picture *Caligula* worldwide and to California residents on www.vimeo.com, and
23 using Penthouse's Caligula copyrights and trademarks to do so, and infringing on the
24 registered OMNI trademark and copyrights by operating the <https://omni.media>
25 website and posting infringing material on www.youtube.com and other websites,
26 all of which Defendants knew would cause harm to Penthouse in California, given
27 that Penthouse notified Defendants of Penthouse's superior rights to the *Caligula*
28 copyrights and trademarks as far back as September 2013. Defendants also knew

1 that their conduct would cause harm to the registrant of the OMNI trademarks and
2 copyrights worldwide. In so doing, they have purposefully availed themselves of
3 the privilege of conducting activities in this forum, thereby invoking the benefits
4 and protections of its laws. Venue is also properly laid in this district under 28
5 U.S.C. § 1391(b)(3) due to the Court's personal jurisdiction over the Defendants in
6 this action.

7 **FACTUAL BACKGROUND**

8 13. Bob Guccione was the founder, owner and publisher of *Penthouse*
9 Magazine and the founder of the iconic Penthouse brand. In 1979, Mr. Guccione
10 produced a motion picture titled *Caligula*, which is now a cult classic that blends
11 ancient Roman history with erotica and stars luminaries including Helen Mirren and
12 Peter O'Toole. Mr. Guccione died in 2010.

13 14. General Media was the original publisher and owner of the *Penthouse*
14 Magazine and the owner of the famous PENTHOUSE trademarks, as well as
15 CALIGULA trademarks, including those pending registration by the United States
16 Patent and Trademark Office under Serial Nos. 87284418 and 86803795 (the
17 "CALIGULA Marks").

18 15. In 2012, Defendant Jeremy Frommer purchased at auction the contents
19 of a storage facility in Englewood, New Jersey. Included in this storage facility
20 were numerous examples of the erotic photography for which Mr. Guccione was
21 famous, as well as films, magazines, artwork, and documents of historical, business
22 and legal significance associated with the PENTHOUSE brand, including archival
23 material, physical editions, photographs and illustrations from Guccione's OMNI
24 magazine, and possibly including items relating to the *Caligula* motion picture.

25 16. In November 2012, Mr. Frommer also purchased all of the rights to the
26 items belonging to Mr. Guccione that had come into the possession of an individual
27 named James C. Sell, who had obtained a judgment against Mr. Guccione in
28 Arizona. Thereafter, Mr. Frommer assigned all of the purchased property to a newly

1 formed entity, Guccione Collection LLC ("GC"). Mr. Frommer then began offering
 2 the purchased items for sale through a website.

3 **CALIGULA**

4 17. On or about September 17, 2013, General Media sent a letter to GC and
 5 Jeremy Frommer notifying them that GC's website infringed upon its copyrights and
 6 trademarks by, among other things, offering the *Caligula* motion picture for viewing
 7 by the public for a fee. General Media demanded that GC and Frommer cease and
 8 desist from using the CALIGULA Marks and copyright protected material on their
 9 website.

10 18. Also on or about September 17, 2013, General Media sent a takedown
 11 notice to the domain manager and host demanding that the infringing material be
 12 taken down from Frommer's and GC's website. The domain host took down GC's
 13 website.

14 19. On September 25, 2013, GC filed a Complaint for Declaratory and
 15 Other Relief in the case of *In re PMGI Holdings Inc.*, United States Bankruptcy
 16 Court for the District of Delaware Case No. 13-52259-CSS, in which it sought a
 17 judicial declaration that it was not infringing on any intellectual property rights,
 18 including in the motion picture *Caligula*, based on its purchase of the personal
 19 property of Mr. Guccione at auction and from Mr. Sell. On October 25, 2013,
 20 General Media filed an answer and counterclaim against GC. Both the complaint
 21 and the counterclaim were later mutually dismissed without prejudice and with no
 22 rulings on the merits of any of the claims or counterclaims.

23 20. Penthouse Global Media is the successor to and parent owner of the
 24 PENTHOUSE brand associated with *Penthouse Magazine* and related merchandise
 25 and services. In 2016, Penthouse Global Media acquired General Media and all of
 26 its assets associated with the PENTHOUSE brand, including all of the copyrights
 27 associated with the motion picture *Caligula*. However, General Media remains the
 28 registered owner of the pending CALIGULA trademark registrations (Serial Nos.

1 86803795 and 87284418), and it continues to own the common law CALIGULA
 2 trademarks, as well as the Omni Copyrights defined below. At no time has
 3 Penthouse or any affiliated entity ever transferred or licensed any of its copyrights,
 4 trademarks, or other intellectual property to any of the Defendants for any purpose.

5 21. Despite having being informed of its infringement of intellectual
 6 property rights protecting *Caligula*, Defendants have willfully and blatantly
 7 continued their unauthorized copying, distribution, sale and other use of Penthouse's
 8 intellectual property. More specifically, on or about May 8, 2017, Penthouse
 9 discovered that Defendants were offering the motion picture *Caligula* to the public
 10 for sale or rental on the website www.vimeo.com ("Vimeo.com").

11 22. Defendants also used the CALIGULA Marks on Vimeo.com to
 12 advertise the sale and rental of the *Caligula* motion picture, in a manner that is likely
 13 to cause confusion as to the source of the motion picture, in that Defendants
 14 describe it as "Bob Guccione's Caligula" and state:

15
 16 Bob Guccione's Caligula is a 1979 erotic historical drama film
 17 focusing on the rise and fall of the Roman Emperor Caligula. Starring
 18 Malcolm McDowell, Teresa Ann Savoy, Helen Mirren, Peter O'Toole,
 19 John Steiner and John Gielgud. Caligula is the only feature film
 20 produced by Bob Guccione, founder of Penthouse and OMNI
 21 magazines. Guccione cast Penthouse Pets as extras.

22 A unique film of its time, Caligula is the first to feature explicit
 23 pornographic content mixed with high production values and a
 24 cohesive narrative. Caligula's release was controversial and met with
 25 legal issues and controversies over its portrayal of violent and sexual
 26 content. The uncut version of Caligula is banned in several countries.

27 OMNI

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1 23. Bob Guccione was also one of the founders and the publisher of the
2 science and science fiction magazine OMNI, which was first published in 1978 as a
3 print magazine, and debuted as an online magazine in 1986, and utilized a logo
4 consisting of the word OMNI in stylized font. Through his use of the OMNI mark
5 and logo in commerce to identify the source of the OMNI magazine, Guccione
6 acquired common law trademarks in the word and the logo.

7 24. Mr. Guccione published the OMNI magazines through the corporate
8 entity Omni Publications International, Ltd. ("Omni Publications"). Omni
9 Publications was the original registered author or co-author of all of the OMNI
10 magazines and the owner, or one of the co-owners, of the copyright on the entire
11 series of OMNI magazines (United States Copyright Office Registration No.
12 CSN0012725), as well as the individual registrations on each of 197 individual
13 OMNI magazines bearing Registration Numbers: TX0003991856, TX0004003252,
14 TX0004020739, TX0004175916, TX0004269144, TX0003798785, TX0003775298,
15 TX0003724378, TX0003835334, TX0003724590, TX0003847056, TX0003906046,
16 TX0003907477, TX0003959999, TX0003938941, TX0003973417, TX0004018218,
17 TX0003468820, TX0003544448, TX0003524892, TX0003561636, TX0003597140,
18 TX0003620244, TX0003641732, TX0003641731, TX0003694283, TX0003681212,
19 TX0003773673, TX0003246538, TX0003250764, TX0003300687, TX0003304449,
20 TX0003329912, TX0003351964, TX0003446042, TX0003388380, TX0003420400,
21 TX0003420167, TX0003449685, TX0003468834, TX0003019904, TX0002994617,
22 TX0003039147, TX0003039148, TX0003065071, TX0003071648, TX0003090328,
23 TX0003117665, TX0003142895, TX0003195915, TX0003203223, TX0003202401,
24 TX0003217797, TX0002821818, TX0002821817, TX0002833027, TX0002833023,
25 TX0002888894, TX0002904815, TX0002904816, TX0002958017, TX0002958016,
26 TX0002958015, TX0002957506, TX0002507961, TX0002507965, TX0002586758,
27 TX0002586761, TX0002620337, TX0002620343, TX0002620336, TX0003210277,

1 TX0003210268, TX0002795028, TX0002795052, TX0002795062, TX0002239341,
2 TX0002259840, TX0002368705, TX0002368687, TX0002368623, TX0002368652,
3 TX0002368651, TX0002403752, TX0002403750, TX0002507997, TX0002507988,
4 TX0002507999, TX0002034678, TX0002112384, TX0002112393, TX0002103462,
5 TX0002103461, TX0002154030, TX0002146343, TX0002146434, TX0002146344,
6 TX0002210969, TX0002239278, TX0002239339, TX0001806814, TX0001806586,
7 TX0001858436, TX0001858445, TX0001890566, TX0001944948, TX0001944947,
8 TX0001947041, TX0001975391, TX0001962351, TX0002112374, TX0001589736,
9 TX0001589697, TX0001589696, TX0001630455, TX0001619442, TX0001719293,
10 TX0001719295, TX0001676950, TX0001720095, TX0001779648, TX0001779638,
11 TX0001806500, TX0001325951, TX0001589725, TX0001371820, TX0001405330,
12 TX0001405328, TX0001405329, TX0001440323, TX0001473554, TX0001589726,
13 TX0001485321, TX0001485320, TX0001473654, TX0001589735, TX0001108018,
14 TX0001108015, TX0001108014, TX0001108017, TX0001189900, TX0001204571,
15 TX0001189907, TX0001589737, TX0001248663, TX0001345918, TX0001589738,
16 TX0001345917, TX0001589733, TX0001325950, TX0000870107, TX0000901230,
17 TX0000901235, TX0000951003, TX0000936617, TX0000963053, TX0000997001,
18 TX0001009186, TX0001104113, TX0001013993, TX0001104114, TX0001108016,
19 TX0000650166, TX0000650165, TX0000681436, TX0000715395, TX0000769291,
20 TX0000723411, TX0000739020, TX0000901237, TX0000791548, TX0000842305,
21 TX0000826931, TX0000870103, TX0000407003, TX0000453221, TX0000453193,
22 TX0000460660, TX0000486318, TX0000511667, TX0000530009, TX0000547913,
23 TX0000556587, TX0000591313, TX0000590389, TX0000655381, TX0000186081,
24 TX0000229198, TX0000307161, TX0000260189, TX0000265181, TX0000276037,
25 TX0000328427, TX0000396934, TX0000369822, TX0000397539, and
26 TX0000395984 (the "Omni Copyrights").
27
28 / / /

1 25. On January 16, 2007, Omni Publications was merged into General
2 Media International, Inc. By February 24, 1995, General Media International, Inc.,
3 had become Penthouse International Ltd., as evidenced by a Certificate of Change
4 filed with the Secretary of the State of New York. On October 2, 1995, Penthouse
5 International, Ltd., changed its name to General Media Communications, Inc. As a
6 result of the mergers and the name change, all of the Omni Copyrights became the
7 property of General Media effective no later than January 16, 2007. On August 10,
8 2017, General Media submitted a Memorandum of Copyright Transfer to the United
9 States Copyright Office for recording. General Media remains the current owner of
10 the Omni Copyrights as reflected in the recorded Memorandum of Copyright
11 Transfer.

12 26. Penthouse Global Media is the successor to, assignee and current owner
13 of the common law OMNI trademarks and the United States trademark registrations
14 and trademark application for the OMNI trademark, including Registration No.
15 4932689 for magazines of science fact, fiction and fantasy, Registration No.
16 4964743 for an internet website featuring electronic publications in the fields of
17 science fiction, science fact, fantasy and futurism, and Serial No. 86002052, as well
18 as international registrations (collectively, the "OMNI Marks"), and all of the
19 goodwill associated with the OMNI Marks.

20 27. Despite the fact that an application for registration of the OMNI Marks
21 in connection with magazines had already been filed with the USPTO by
22 Penthouse's predecessor in interest, signaling to the world that the OMNI Marks
23 were not available for use by Defendants, in 2013, Defendants Frommer and
24 Schwartz again willfully and blatantly disregarded the intellectual property rights of
25 others and began planning to publish an online science and science fiction magazine
26 using the OMNI Marks and to republish and sell archival material from the original
27 OMNI magazine protected by the Omni Copyrights.

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1 28. On or about June 27, 2013, Defendant Jerrick Ventures, LLC filed an
 2 application for registration of the purported trademark OMNI REBOOT (Serial No.
 3 85,972,230), which registration was refused by the United States Patent and
 4 Trademark Office because of a likelihood of confusion with a registered OMNI
 5 Mark. On or about May 31, 2016, Jerrick Ventures, LLC filed a cancellation
 6 proceeding before the Trademark Trial and Appeal Board ("TTAB") seeking to
 7 cancel the OMNI Mark (Cancellation No. 92063829). Because Penthouse General
 8 Media seeks a declaration in the present action that its registered OMNI Marks are
 9 valid and should not be cancelled, it has moved to have the cancellation proceeding
 10 before the TTAB suspended pending the judgment in this action.

11 29. Despite knowing of the existence of the registered OMNI Marks, and
 12 despite being denied registration of Omni Reboot, Defendants nonetheless
 13 proceeded to willfully and blatantly infringe on the OMNI Marks and Omni
 14 Copyrights by operating an online magazine at <https://omni.media>, which it refers to
 15 as OMNI Reboot, that not only uses the OMNI Marks in connection with the
 16 publication of an online magazine featuring science and science fiction topics, but
 17 also contains archival material from the original OMNI magazine, including
 18 magazine articles and reproductions of OMNI magazine covers, all without the
 19 permission or consent of Penthouse. Defendants also reproduced, published, offered
 20 for sale, and sold electronic copies of the Omni magazines on the website
 21 www.amazon.com for viewing on Amazon's Kindle products, and has continued to
 22 post them on various websites even during the pendency of this action, including
 23 www.vimeo.com and likely others that will continue to be discovered during the
 24 course of the litigation.

25 30. Defendants have issued various press releases to advertise and attract
 26 consumer attention to their activities using the OMNI Marks and selling electronic
 27 copies of the magazines protected by the Omni Copyrights. For example, on or
 28 about September 12, 2016, Defendant Jerrick Media Holdings, Inc. released a press

1 release stating, among other things, that: "Jerrick has released a three part series of
 2 science fiction stories available for digital download, entitled OMNI Best of Science
 3 Fiction One, Two, and Three. Content from the series is featured on Jerrick Media's
 4 brand OMNI, born from the science fiction magazine of the 1970s, 80s, and 90s,
 5 created by Bob Guccione." On or about May 30, 2017, Jerrick Media Holdings, Inc.
 6 issued a press release stating that it had "announced today the launch of *The Omni*
 7 *Archive*...[that] features every issue of the seminal science fiction publication
 8 *Omni*" and that "Omni Magazine was an award-winning science fiction
 9 magazine...[c]reated by publishing mogul Bob Guccione." The press release further
 10 advertised that "all 200 issues of the published magazines are available for viewing
 11 and purchase on Amazon.... This is the first time the collection has been available
 12 for digital download in high-resolution."

13 31. Various media outlets have republished information released by
 14 Defendants. For example, on or about June 26, 2017, Variety magazine online
 15 (www.variety.com) reported that Defendant Jerrick Media had partnered with Jared
 16 Leto and Paradox LLC to produce original content using the OMNI Marks.
 17 Similarly, www.pagesix.com reported that Jared Leto had partnered with Defendant
 18 Rick Schwartz to develop a futuristic television anthology under the OMNI Marks.
 19 Defendants' dissemination of such information to the media reflects their ongoing
 20 and blatant disregard for the intellectual property rights of Penthouse and their
 21 manifest intent to capitalize on those rights for their own gain.

22 32. On or about July 26, 2017, Penthouse discovered that Defendants were
 23 advertising their exploitation of the OMNI Marks and Omni Copyrights on the
 24 YouTube, LLC website at:

25 https://www.youtube.com/channel/UCRetf_M4Qc0WLG06PPCJ_Pg.

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FIRST CLAIM FOR RELIEF

(Copyright Infringement)

33. Penthouse incorporates the allegations of each foregoing paragraph as though fully set forth herein.

34. Penthouse Global Media is the owner of the following registered copyrights relating to the motion picture *Caligula*:

a. Registration No. TX0000204514 (created in 1978 and registered in 1979): *Gore Vidal's Caligula* (novel);

b. Registration No. PA0000083587 (created in 1979 and registered in 1980): *Caligula / a Penthouse Films International and Felix Cinematografica, S.R.L. production; a Bob Guccione, Franco Rossellini Production* (motion picture);

c. Registration No. PA0000449630 (1990 supplement to Registration No. PA0000083587): *Caligula By Felix Cinematografica* (motion picture); and

d. Registration No. PA0001737842 (created in 2007 and registered in 2009): *Caligula: The Imperial Edition* (motion picture *Caligula* with alternate pre-release version, *The Making of Caligula* documentary, audio commentaries, video interviews, deleted scenes, alternate scenes, behind the scenes footage, set photos, packaging text and artwork).

35. Defendants have had access to the motion picture *Caligula* through its widespread distribution since its creation in 1979, as well as through the purchase by Mr. Frommer of various items of Mr. Guccione's memorabilia. Defendant GC's access to the motion picture *Caligula* was admitted in its complaint for declaratory relief filed on September 25, 2013, in the case of *In re PMGI Holdings Inc.*, United States Bankruptcy Court for the District of Delaware Case No. 13-52259-CSS, in which it sought a judicial declaration that it was not infringing on any intellectual property rights, including in the motion picture *Caligula*.

1 36. Defendants recently have made a copy of the motion picture *Caligula*
2 available to the public for purchase or rental on Vimeo.com.

3 37. General Media is the owner of the Omni Copyrights. Defendants have
4 been copying, reproducing, selling, distributing, and making works derivative of the
5 magazines protected by the Omni Copyrights, including without limitation, on the
6 websites www.youtube.com, <https://omni.media>, and www.amazon.com.

7 38. Penthouse has never transferred or licensed any interest in any
8 copyrights in *Caligula* or any of the Omni Copyrights to any of the Defendants,
9 either in writing or otherwise, and has not consented to Defendants' reproduction,
10 publication, distribution and sale of the motion picture *Caligula* or the Omni
11 magazines.

12 39. Defendants' unauthorized reproduction, publication, distribution and
13 sale of the motion picture *Caligula* and the Omni magazines constitutes
14 infringement of Penthouse's registered copyrights in violation of the Copyright Act,
15 17 U.S.C. §§ 101, *et seq.*

16 40. Penthouse is informed and believes, and based thereon alleges, that
17 Defendants' copying, distribution and sale of the motion picture *Caligula* and the
18 Omni magazines, after being informed of Penthouse's copyrights, was deliberate,
19 willful, malicious, oppressive, and in manifest disregard of Penthouse's proprietary
20 rights.

21 41. Defendants' willful copyright infringement has caused, and will
22 continue to cause, Penthouse to suffer substantial injuries, loss, and damage to its
23 proprietary and exclusive rights to the motion picture *Caligula* and the Omni
24 magazines and further has damaged Penthouse's business reputation and goodwill,
25 diverted their trade, and caused loss of profits, all in an as-yet undetermined
26 amount. Penthouse is entitled to compensatory damages, as well as the profits
27 earned by Defendants as a result of their infringement pursuant to 17 U.S.C. § 504.
28

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2 42. Defendants' copyright infringement, and the threat of continuing
3 infringement, have caused and will continue to cause Penthouse repeated and
4 irreparable injury. It would be difficult to ascertain the amount of money damages
5 that would afford Penthouse complete relief at law for Defendants' acts and
6 continuing acts. Penthouse's remedy at law is not adequate to compensate it for the
7 injuries already inflicted and further threatened. Therefore, Penthouse is entitled to
8 preliminary and permanent injunctive relief pursuant to 17 U.S.C. § 502.

9 43. Penthouse is also entitled to recover its attorneys' fees and costs of suit
10 pursuant to 17 U.S.C. § 505.

SECOND CLAIM FOR RELIEF

(Infringement of Registered Trademarks Under 15 U.S.C. § 1114)

13 44. Penthouse incorporates the allegations of each foregoing paragraph as
14 though fully set forth herein.

15 || 45. General Media is the owner of the CALIGULA Marks.

16 46. Penthouse Global Media is the owner of the registered OMNI Marks,
17 including Registration No. 4932689 for magazines of science fact, fiction and
18 fantasy, Registration No. 4964743 for an internet website featuring electronic
19 publications in the fields of science fiction, science fact, fantasy and futurism.

20 47. Defendants are using or have used the CALIGULA Marks in
21 commerce in connection with the marketing, distribution and sale of the *Caligula*
22 motion picture in various media, including on Vimeo.com. Defendants are using the
23 OMNI Marks in commerce in connection with their online science and science
24 fiction magazine and sales of OMNI magazines and related goods.

25 48. Defendants never sought or received Penthouse 's authorization to use
26 the CALIGULA or OMNI Marks for any purpose.

27 49. Defendants' use of the CALIGULA and OMNI Marks is likely to cause
28 and/or has actually caused confusion in the marketplace by creating the false and

1 mistaken impression that Defendants' distribution and sale of the *Caligula* motion
 2 picture and/or publication of an OMNI online magazine and related activities are
 3 affiliated, connected or associated with Penthouse, or that they originate with, or are
 4 sponsored or approved by Penthouse.

5 50. Penthouse is informed and believes, and based thereon alleges, that
 6 Defendants' purpose in using the CALIGULA and OMNI Marks was and is to
 7 deceive, mislead and confuse customers and the public into believing that
 8 Defendants' activities are affiliated, connected or associated with Penthouse, or that
 9 they originate with, or are sponsored or approved by Penthouse, and to trade on the
 10 substantial and historical fame, notoriety, reputation and goodwill associated with
 11 the CALIGULA and OMNI Marks.

12 51. Defendants' use of the CALIGULA and OMNI Marks violates the
 13 Lanham Act, 15 U.S.C. § 1114. Defendants' use of the CALIGULA and OMNI
 14 Marks also falls within the definition of a counterfeit mark set forth in the Lanham
 15 Act, 15 U.S.C. § 1116(d).

16 52. Defendants' use of the CALIGULA and OMNI Marks has caused and,
 17 if not enjoined, will continue to cause, irreparable and continuing harm to Penthouse
 18 in the diminution of value and goodwill of the CALIGULA and OMNI Marks, and
 19 in their impairment to serve as trademarks, for which Penthouse has no adequate
 20 legal remedy. Accordingly, Penthouse is entitled to provisional, preliminary and
 21 permanent injunctive relief to compel cessation of all infringing and otherwise
 22 harmful conduct.

23 53. As a direct and proximate result of Defendants' wrongful conduct,
 24 Penthouse has been and will continue to be damaged by, without limitation, loss of
 25 profit, and diminution in the value of the CALIGULA and OMNI Marks and in its
 26 reputation and goodwill, in an amount to be proven at trial.

27 54. Defendants' wrongful use of the CALIGULA and OMNI Marks was
 28 and continues to be knowing, deliberate, willful, fraudulent, and without extenuating

1 circumstances. Because Defendants are intentionally, knowingly, and willfully
 2 using counterfeits of the registered CALIGULA and OMNI Marks, Penthouse is
 3 entitled to recover three times the amount of actual damages or profits, whichever is
 4 greater, or statutory damages, and attorney's fees and costs incurred in this action
 5 pursuant to 15 U.S.C. § 1117(a) - (c).

THIRD CLAIM FOR RELIEF

7 (False Designation of Origin Under 15 U.S.C. § 1125(a))

8 55. Penthouse incorporates the allegations of each foregoing paragraph as
 9 though fully set forth herein.

10 56. The CALIGULA and OMNI Marks are distinctive of goods and
 11 services originating with Penthouse. The Defendants' unauthorized use of the
 12 CALIGULA and OMNI Marks, particularly when combined with references to Mr.
 13 Guccione and Penthouse, is likely to cause and, on information and belief, has
 14 actually caused confusion in the marketplace by creating the false and mistaken
 15 impression that Defendants' advertising, rental and sales of the *Caligula* motion
 16 picture, and distribution of the online Omni Reboot magazine, are affiliated,
 17 connected or associated with Penthouse, or that they originate with, or are sponsored
 18 or approved by Penthouse.

19 57. Defendants' use of the CALIGULA and OMNI Marks has caused and,
 20 if not enjoined, will continue to cause, irreparable and continuing harm to Penthouse
 21 in the diminution of their value and goodwill as trademarks, and in their impairment
 22 to serve as a trademarks, for which Penthouse has no adequate legal remedy.
 23 Accordingly, Penthouse is entitled to provisional, preliminary and permanent
 24 injunctive relief to compel cessation of all infringing and otherwise harmful
 25 conduct.

26 58. As a direct and proximate result of Defendants' wrongful conduct,
 27 Plaintiffs have been and will continue to be damaged by, without limitation, lost
 28 sales and diminution in the value of the CALIGULA and OMNI Marks and in its

reputation and goodwill, in an amount to be proven at trial.

2 59. Defendants' wrongful use of the CALIGULA and OMNI Marks is
3 knowing, deliberate, willful, fraudulent, and without extenuating circumstances.
4 Penthouse is therefore entitled to recover its actual damages and attorney's fees and
5 costs incurred in this action, as well as Defendants' profits from their infringement
6 of the CALIGULA and OMNI Marks.

FOURTH CLAIM FOR RELIEF

(Trademark Dilution Under 15 U.S.C. § 1125(c))

9 60. Penthouse incorporates the allegations of each foregoing paragraph as
10 though fully set forth herein.

11 61. The CALIGULA and OMNI Marks are famous and distinctive in that
12 they are widely recognized by the general consuming public as a designation of
13 Penthouse as the source of the goods or services represented by the CALIGULA and
14 OMNI Marks.

15 62. Defendants' use of the CALIGULA and OMNI Marks impairs the
16 distinctiveness of the famous CALIGULA and OMNI Marks and, as such, causes
17 dilution by blurring.

18 63. Defendants willfully intended to trade on the recognition and value of
19 the CALIGULA and OMNI Marks.

20 64. Defendants' use of the CALIGULA and OMNI Marks has caused and,
21 if not enjoined, will continue to cause, irreparable and continuing harm to Penthouse
22 in the diminution of their value and goodwill as trademarks, and in their impairment
23 to serve as trademarks, for which Penthouse has no adequate legal remedy.
24 Accordingly, Penthouse is entitled to provisional, preliminary and permanent
25 injunctive relief to compel cessation of all infringing and otherwise harmful
26 conduct.

27 65. Defendants' wrongful use of the CALIGULA and OMNI Marks
28 commenced after October 6, 2006. Defendants' wrongful use of the CALIGULA

1 and OMNI Marks was and continues to be knowing, deliberate, willful, fraudulent,
2 and without extenuating circumstances. Penthouse is therefore entitled to recover its
3 damages, Defendants' profits, and Penthouse's attorneys' fees and costs of this
4 action, pursuant to 15 U.S.C. § 1117(a).

5 66. Penthouse is further entitled to an order that all materials in the
6 possession of the Defendant bearing the CALIGULA and OMNI Marks be delivered
7 up and destroyed pursuant to 15 U.S.C. § 1118.

FIFTH CLAIM FOR RELIEF

(Common Law Trademark Infringement)

10 67. Penthouse incorporates the allegations of each foregoing paragraph as
11 though fully set forth herein.

12 68. Defendants are using the CALIGULA Marks in commerce in
13 connection with their advertising, rental and sale of copies of the *Caligula* motion
14 picture. Defendants are using both the exact word that comprises the CALIGULA
15 Marks, as well as references to Mr. Guccione and Penthouse.

16 69. Defendants are using the OMNI Marks in commerce in connection with
17 their publication of the online Omni Reboot magazine. Defendants are using both
18 the exact word that comprises the OMNI Marks, as well as references to Mr.
19 Guccione and Penthouse.

20 70. Defendants never sought or received Penthouse's authorization to use
21 the CALIGULA Marks or the OMNI Marks.

22 71. Defendants' use of the CALIGULA and OMNI Marks is likely to cause
23 and/or has actually caused confusion in the marketplace by creating the false and
24 mistaken impression that Defendants' advertising, sales and rentals of the *Caligula*
25 motion picture, and their online publication of the Omni Reboot magazine, are being
26 marketed are affiliated, connected or associated with Penthouse, or that they
27 originate with, or are sponsored or approved by Penthouse.

28 ||| 72. Penthouse is informed and believes, and based thereon alleges, that

1 Defendants' purpose in using the CALIGULA and OMNI Marks was and is to
2 deceive, mislead and confuse customers and the public into believing that
3 Defendants' advertising, sales and rentals of the *Caligula* motion picture, and their
4 online publication of the Omni Reboot magazine, are affiliated, connected or
5 associated with Penthouse, or that they originate with, or are sponsored or approved
6 by Penthouse, and to trade on the substantial and historical fame, notoriety,
7 reputation and goodwill associated with the CALIGULA and OMNI Marks.

8 73. Defendants' use of the CALIGULA and OMNI Marks violates the
9 common law of the State of California.

10 74. Defendants' use of the CALIGULA and OMNI Marks has caused and,
11 if not enjoined, will continue to cause, irreparable and continuing harm to Penthouse
12 in the diminution of value and goodwill of the CALIGULA and OMNI Marks, and
13 in their impairment to serve as trademarks, for which Penthouse has no adequate
14 legal remedy. Accordingly, Penthouse is entitled to provisional, preliminary and
15 permanent injunctive relief to compel cessation of all infringing and otherwise
16 harmful conduct.

17 75. As a direct and proximate result of Defendants' wrongful conduct,
18 Penthouse has been and will continue to be damaged by, without limitation, loss of
19 profit, and diminution in the value of the CALIGULA and OMNI Marks and in its
20 reputation and goodwill, in an amount to be proven at trial.

SIXTH CLAIM FOR RELIEF

(Common Law Unfair Competition)

23 76. Penthouse incorporates the allegations of each foregoing paragraph as
24 though fully set forth herein.

25 77. Defendants' use of the CALIGULA and OMNI Marks has the effect of
26 passing off Defendants' advertising, sale and rental of the *Caligula* motion picture,
27 and their online publication of the Omni Reboot magazine and related sales
28 activities, as being produced, endorsed or authorized by Penthouse.

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2 78. Defendants' misconduct constitutes unfair competition in that it offends
3 established public policy and is immoral, unethical, oppressive, unscrupulous and
4 injurious to consumers.

5 79. As a direct and proximate result of Defendants' wrongful conduct,
6 Penthouse has been and will continue to be damaged by, without limitation, loss of
7 profit, and diminution in the value of the CALIGULA and OMNI Marks and in their
8 reputation and goodwill, in an amount to be proven at trial.

9 80. The acts of unfair competition alleged herein were committed with
10 oppression, fraud and malice. Specifically, Defendants used the CALIGULA and
11 OMNI Marks with knowledge that Penthouse owns the exclusive right to such use.
12 Defendants' continuing use of the CALIGULA and OMNI Marks was unauthorized
13 and caused consumer confusion, resulting in continuing injury to Penthouse.

14 81. Penthouse requests the imposition of exemplary damages pursuant to
15 California Civil Code § 3294.

SEVENTH CLAIM FOR RELIEF

(Unfair Competition in Violation of

California Business & Professions Code § 17200, *et seq.*)

19 82. Penthouse incorporates the allegations of each foregoing paragraph as
20 though fully set forth herein.

21 83. Defendants' unauthorized use of the CALIGULA and OMNI Marks
22 and copyrights constitutes unlawful, unfair or fraudulent business acts or practices
23 within the meaning of California Business & Professions Code § 17200.

24 84. Defendants' wrongful conduct has caused and, if not enjoined, will
25 continue to cause irreparable and continuing harm to Penthouse, for which it has no
26 adequate legal remedy.

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EIGHTH CLAIM FOR RELIEF

(Trademark Dilution in Violation of

California Business & Professions Code § 14247, *et seq.*)

85. Penthouse incorporates the allegations of each foregoing paragraph as though fully set forth herein.

86. The CALIGULA and OMNI Marks are famous and distinctive in California in that they are widely recognized by the general consuming public of this state as a designation of Penthouse as the source of the goods or services represented by the CALIGULA and OMNI Marks.

11 87. Defendants began using the CALIGULA and OMNI Marks without
12 authorization from Penthouse after the CALIGULA and OMNI Marks had become
13 famous.

14 88. Defendants' unauthorized use of the CALIGULA and OMNI Marks is
15 likely to cause dilution of the famous CALIGULA and OMNI Marks.

16 89. Defendants' unauthorized use of the CALIGULA and OMNI Marks
17 has caused and, if not enjoined, will continue to cause irreparable and continuing
18 harm to Penthouse, for which it has no adequate legal remedy.

19 90. Defendants' dilution of the CALIGULA and OMNI Marks was willful,
20 as evidenced by their continuing use of the CALIGULA and OMNI Marks after
21 being advised of Penthouse's exclusive trademark rights, entitling Penthouse to an
22 award of up to three times Defendants' profits from, and up to three times all
23 damages suffered by reason of Defendants' wrongful use of the CALIGULA and
24 OMNI Marks, pursuant to Sections 14247(b) and 14250 of the California Business
25 & Professions Code.

NINTH CLAIM FOR RELIEF

(Declaratory Relief)

28 || 91. Penthouse incorporates the allegations of each foregoing paragraph as

1 though fully set forth herein.

2 92. This is an action for declaratory judgment of the Penthouse's priority of
3 right as to the OMNI Marks pursuant to the Lanham Act, 15 U.S.C. § 1057(c).

4 93. An actual and justiciable controversy exists between Penthouse and
5 Defendant Jerrick Ventures LLC regarding the parties' respective rights in regards to
6 the OMNI Marks, as evidenced by Jerrick Ventures LLC's filing of a Petition for
7 Cancellation of a registered OMNI Mark (Cancellation No. 92063829) (the
8 "Cancellation"),

9 94. The registrant of the OMNI Mark that Jerrick Ventures LLC seeks to
10 cancel filed an intent-to-use application with the United States Patent and
11 Trademark Office on or about June 6, 2012. The OMNI Mark was registered on the
12 Principle Register on April 5, 2016 (Reg. No. 4,932,689). All of the OMNI Marks
13 were subsequently assigned to Penthouse, along with all of the goodwill associated
14 with them.

15 95. In its Cancellation, Jerrick Ventures LLC admits that it did not start
16 using the OMNI or OMNI REBOOT marks in commerce until in or about August
17 2013. Jerrick Ventures LLC further admits that it did not file an application to
18 register the purported OMNI REBOOT trademark until June 27, 2013.

19 96. Jerrick Ventures LLC contends in the Cancellation that the OMNI
20 Mark should be cancelled because (a) there is a likelihood of confusion between the
21 OMNI and OMNI REBOOT marks, (b) the registrant of the OMNI Mark had no
22 bona fide intent to use the OMNI Mark in commerce at the time she filed her intent-
23 to-use application, and (c) Jerrick Ventures LLC obtained the right to use the OMNI
24 Mark and all of the goodwill associated therewith from the Estate of Bob Guccione.

25 97. Penthouse denies the above-referenced contentions of Jerrick Ventures
26 LLC in the Cancellation and contends, and seeks this Court's declaration, that the
27 registrant's filing of the intent-to-use application on June 6, 2012, conferred a
28 priority of right superior to any rights of Jerrick Ventures LLC in any purported

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OMNI REBOOT trademark and that the Cancellation should be dismissed with prejudice.

TENTH CLAIM FOR RELIEF

(False Advertising in Violation of California

Business and Professions Code § 17500, *et seq.*)

98. Penthouse incorporates the allegations of each foregoing paragraph as though fully set forth herein.

9 99. Defendants have disseminated press releases and other online
10 publications falsely indicating or stating that they are the owners of the OMNI and/
11 or CALIGULA Marks and copyrights in an effort to make sales of copies of the
12 *Caligula* motion picture, the OMNI magazines, memorabilia, and other goods.

13 100. Defendants know that they do not own the OMNI and CALIGULA
14 Marks or copyrights. Not only have they not been assigned any such copyrights or
15 trademarks, but the USPTO expressly refused to register Defendants' purported
16 OMNI REBOOT mark due to the prior registration of one of the OMNI Marks, and
17 Penthouse has notified Defendants of their infringement, including by way of its
18 September 2013 cease and desist letter to Defendants GC and Frommer.

19 101. Defendants' false statements as to their ownership of the OMNI and
20 CALIGULA Marks and copyrights are causing consumers to purchase copies of the
21 OMNI magazine and *Caligula* motion picture from Defendants, instead of from
22 Penthouse, the rightful owner of the intellectual property rights.

23 102. Defendants' conduct constitutes false advertising in violation of
24 California Business and Professions Code § 17500, *et seq.*

25 103. As a direct and proximate result of Defendants' false advertising,
26 Penthouse has been and will continue to be damaged by, without limitation, loss of
27 profit, and diminution in the value of the CALIGULA and OMNI Marks and in its
28 reputation and goodwill, in an amount to be proven at trial. If not enjoined,

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2 Defendants' false advertising will continue to cause irreparable and continuing harm
3 to Penthouse, for which it has no adequate legal remedy.

ELEVENTH CLAIM FOR RELIEF

(Unjust Enrichment)

6 104. Penthouse incorporates the allegations of each foregoing paragraph as
7 though fully set forth herein.

8 105. Through their wrongful and willful use of Penthouse's intellectual
9 property, Defendants have received various benefits, including revenues generated
10 by the publication and distribution of the *Caligula* motion picture and the OMNI
11 Magazine, as well as press, media and consumer attention to their unauthorized
12 activities. Defendants have unjustly retained all such benefits at the expense of
13 Penthouse and have been unjustly enriched.

14 106. As a direct and proximate result of Defendants' unjust retention of the
15 benefits they have received from their use of Penthouse's intellectual property,
16 Penthouse has been and will continue to be damaged by, without limitation, loss of
17 profit, and diminution in the value of the CALIGULA and OMNI Marks and in its
18 reputation and goodwill, in an amount to be proven at trial, for which it is entitled to
19 restitution.

PRAYER FOR RELIEF

WHEREFORE, Penthouse prays for relief as follows:

- 23 1. The damages sustained by Penthouse and Defendants' profits;
24 2. Statutory damages pursuant to 17 U.S.C. § 504;
25 3. Treble damages for use of a counterfeit trademark pursuant to 15
U.S.C. § 1117(b);
27 4. Punitive damages;
28 5. Injunctive relief prohibiting Defendants from any future unauthorized

1 use of Penthouse's property that is the subject of this lawsuit;

2 6. An order that all materials in the possession of the Defendants bearing
3 the CALIGULA and OMNI Marks be delivered up and destroyed;

4 7. A judicial declaration that the registrant's filing of the intent-to-use
5 application on June 6, 2012, conferred a priority of right superior to any rights of
6 Jerrick Ventures LLC in any purported OMNI REBOOT trademark and that the
7 Cancellation should be dismissed with prejudice.

8 8. Penthouse's costs in this action and reasonable attorney's fees and
9 expenses;

10 9. Prejudgment interest; and

11 10. For such additional and further relief as this Court deems just and
12 proper.

14 Dated: December 11, 2017 SEDGWICK LLP

16 By: /s/ Caroline H. Mankey

17 Caroline H. Mankey
18 Attorneys for Plaintiffs
19 PENTHOUSE GLOBAL MEDIA, INC.
and GENERAL MEDIA
COMMUNICATIONS, INC.

DEMAND FOR JURY TRIAL

Plaintiffs Penthouse Global Media, Inc. and General Media Communications, Inc. hereby demand a trial by jury on all issues triable by jury.

Dated: December 11, 2017 SEDGWICK LLP

By: /s/ Caroline H. Mankey

Caroline H. Mankey
Attorneys for Plaintiff
PENTHOUSE GLOBAL DIGITAL INC.
and GENERAL MEDIA
COMMUNICATIONS, INC.